

September 5, 2017
7:00 PM

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Jeff Duncan, Greg Whalen, Dennis Lentz, Melissa Horner – Alternate, and Christine Bennett – Alternate.

Also present: Kate Pelletier, Planning Assistant.

Absent: Larry Bouchard (excused).

Voting members: Steve Beckert, Jeff Duncan, Dennis Lentz, Greg Whalen, and Ms. Horner - Alternate.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – REVIEW AND APPROVE MINUTES, AS NEEDED

Mr. Lentz moved, second by Mr. Whalen, to approve the minutes of August 1, 2017, as amended.

VOTE

4-1 (Mr. Duncan abstained)

Chair votes in the affirmative

ITEM 5 – REVIEW “NOTICE OF DECISION” LETTERS, AS NEEDED

A. Northern Utilities (PB16-9)

Ms. Bennett said that, regarding the Conclusions based on §44-44 page 2, we never discussed any of these things.

Ms. Pelletier said that she was assuming that the PB was adopting her checklist; that the PB doesn't technically discuss anything in this letter.

Ms. Bennett said that these are Findings of Fact and Conclusions of law and she doesn't believe, even in the Checklist that sites a review of §44-44...if we did, she apologized; that she doesn't find it within the Checklist and she doesn't recall it being in the minutes, either.

Ms. Pelletier said that she could take it out, if the PB wished.

Mr. Beckert asked for PB input.

Mr. Duncan said that, certainly, if it was not discussed and not in the minutes, he would say that it shouldn't be a Finding of Fact or Conclusion.

ITEM 6 – PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. 10-minute public input session

Ms. (Rosanne) Adams asked if members of the public could get copies of the by-laws you are working on and, also, the letter from Christine Bennett, if they will be discussed, so we can follow along.

Mr. Beckert said yes.

Mr. (Jay) Meyer said that he was curious as to when the approved minutes will be available on the Town website; that the last approved minutes on the Town website are for April 28th and he knows the PB has approved quite a few since then.

Ms. Pelletier said that she just hasn't had the chance to get them to the Town Clerk, yet, but she will do so immediately.

B. Continued review and discussion of legal and public notice requirements.

Ms. Pelletier said that she has not yet received an answer back from Attorney Saucier; that he was on vacation but said we should expect something by next week.

Ms. Bennett asked if we could review what we were asking Attorney Saucier.

Ms. Pelletier said that we asked him to clarify the second part of that question that the PB felt he did not answer about the lack of public notice...she can't remember if it was warranting a second hearing.

Mr. Lentz said that it was in the minutes we just approved.

Ms. Pelletier said that we also asked if you ever put notes within ordinances; if that is ever appropriate; that she just joined the Maine Planner's List Serve and asked the question there, as well, just to see if any other towns do that and if anyone had insight into that; that she will share any response she receives.

Mr. Beckert said that he thought we should wait for Attorney Saucier's input.

Ms. Pelletier said that that makes sense.

Mr. Beckert asked if anyone had anything else they wanted to discuss on these issues.

Ms. Bennett said that she wonders if we require Attorney Saucier's response before we consider including this in our by-laws; that he has come down pretty clearly how we are to interpret the 10-day rule and we should, perhaps, include that in a section of the by-laws regarding notice on how we're going to conduct our meetings.

Mr. Duncan moved, second by Mr. Whalen, that submissions by an applicant, or an applicant's representative, be at least 10 days prior to the meeting at which those items will be discussed.

DISCUSSION

Mr. Whalen asked if, referencing Attorney Saucier's letter, that covers Questions 1A, 1B, and 1C. He said that there are a lot of opinions and examples in those referenced items in his letter, asking, again, if the motion, in fact, covers what Attorney Saucier has outlined. He added that he just wanted to make sure we hadn't left anything out or worded as such that it will be subject to further interpretation down the road. He asked if we would be better off referencing his memorandum, saying that it shall be as outlined in Attorney Saucier's letter.

Mr. Beckert said that we could do that, if that's what the Board desires.

Mr. Duncan said that Paragraph 1 C, and he doesn't have the letter in front of him, but that paragraph is what we are asking for further clarification on.

The PB agreed that that was correct.

Mr. Whalen said that it is one thing to say, in a motion, 10 days; it's another thing to figure out how those 10 days are calculated; that his letter clearly spells out the methodology by which the benchmark is memorialized.

Mr. Beckert said that Mr. Duncan made the motion and asked him how he wanted to re-word it.

Ms. Horner asked Ms. Pelletier if she could explain the difference between his opinion and how it is happening now.

Ms. Pelletier said that this is not the first time this conversation has happened in her time here; that the way she interpreted it previously was discussed 10 or 12 years ago; that it was a different Board, it was a different interpretation, and that's what she has been applying ever since. She said that, for her, it comes down to the sentence in the definition of "Computation of Time" – "The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday." She said that she agrees with that interpretation, and in the previous Board's interpretation, and that meant it went to the next business day, Monday, not the previous one, Friday, which is what Ms. Bennett believes is the interpretation; which is what Attorney Saucier also believes is the interpretation.

Ms. Bennett said that Attorney Saucier's words were "the plain meaning of the 10-day minimum is that it will be a minimum of 10 days", not 8.

Mr. Duncan moved, second by Mr. Whalen, that public notice would be a minimum of 10 days prior to the meeting that a topic will be discussed, per the 23 June 2017 letter of Attorney Saucier.

VOTE

5-0

Chair votes in the affirmative

C. Continued review and discussion of Planning Board By-laws – July 20, 2017 draft.

Discussion regarding potentially including language that PB members should be registered voters of the Town. The PB agreed to leave the wording in 2) Membership a) Appointments ii) as written.

Discussion regarding moving 4) Administrative duties c) and d) to 3) Officers and their duties. Several members agreed that might be appropriate

Discussion regarding moving 6) Public Hearings b) Site Walks and c) Executive Sessions to 5) Meeting Organization.

Mr. Duncan said that we have been talking about getting something in here about public notice and applicant submissions; that possibly we end up with another paragraph somewhere, whether it's 7) Public Hearings or somewhere else.

Ms. Pelletier said that she thought you have to be careful about that because sometimes those things are already prescribed by statute, they are already in our ordinances in some places; that you have to be very careful about making blanket statements that don't apply to every situation. She reminded them that the table she did shows many different requirements and said that she's not sure you need to do anything there except explain what the rules are of a public hearing; that notification is already covered in the Charter, the Ordinance Governing Boards, Commissions, and Committees, the ordinances, and statutes. She added that one more document with another requirement in it is not a good idea, in her opinion.

After further discussion, Mr. Beckert pointed out that the by-laws that we started with were written in 1980, before the Town had a Planning Assistant and just had a Planning Board; that some of the language is probably antiquated and that it obviously needs some adjustment. He asked what the pleasure of the PB was regarding 'Notice' in the by-laws.

Mr. Whalen said that the challenge with all governance documents is to know when to draw the line between governance in terms of how the Board conducts its business versus requirements that fall into the category of policy; that it is sort of like mission creep and, as you continue to embellish the governance documents, you bear the burden of, all of a sudden, creeping into policy issues that should not be co-mingled with the governance document. He suggested we try to pull back and make certain that, as a

Ms. Lemire agreed, adding that the point was made that you interact with the applicant as the presentation is being given.

Ms. Bennett said that we do draw it back to the Board, to just us.

Mr. Duncan said that the Board's deliberation is after we've heard the application and we are now discussing among ourselves, with a periodic question to the applicant for further clarification; that he would say that before that deliberation takes place, the public should have an opportunity to discuss what the applicant has presented; that in that way our deliberation takes both the applicant and the public's input into consideration.

There was some discussion regarding timing of public input in the sequence.

Mr. Duncan said that, in his opinion, there should be, during the applicant process, the opportunity for a public hearing – on this date, on this topic, done. He added that, in addition to that, there should be an opportunity at each meeting that the applicant presents information, if the public has a question or a comment about that evening's presentation, that they should be afforded the opportunity to bring that out at that point; that that is not part of the public hearing, per se, it's public input just like the applicant at a regular meeting. He said that he thinks this paragraph was an attempt to provide the public that meeting-by-meeting opportunity to speak; that it is distinct and separate from the public hearing. He added that he thinks this paragraph needs a little work to get to that point.

Mr. Whalen asked if we knew the history behind the public hearing process, where it originated.

Ms. Pelletier said from State statute; that she suspects it stems from subdivisions.

Mr. Whalen asked if it was to have the public's voice heard on an application for appropriate due process.

Ms. Pelletier said that there is not a lot in the laws on what the purpose of a public hearing is but every application has one; that she thinks it's an opportunity for people to bring up issues that are specific to their situation that isn't necessarily addressed on a site plan, some affect the proposed use could potentially have that hasn't been considered. She added that she thinks it's an opportunity for the public to point out areas the PB hasn't addressed or things that could be appealed; that it's all of those things but it doesn't say that, specifically, anywhere; that it isn't like the public has an inherent right to approve something but she thinks it's always wise, and avoids problems later between neighbors, to get these issues out. She said that, when people come into her office, she always encourages them to go talk to the neighbor and tell them what they are doing, immediately, before they get a letter from the Town saying that there is something proposed on the property next to you; that that is never received well. She added that she thinks that is an important thing to preserve in the process but there has to

limited to hydrology and not to traffic because traffic hasn't been presented; that it's an opportunity, while it's fresh in everybody's mind, to discuss what the testimony is on the applicant's behalf that evening. He added that, if it can't be answered at that meeting, then the expert is given an opportunity to come back at the next meeting to respond to that instead of waiting until the end when everybody is thinking that this is done and, now, we've got three questions that need one or more meetings to respond to.

Mr. Lentz said that he totally supports what Mr. Duncan was saying; that where he gets hung up is that the intent is to be able to, at our regular meeting, discuss with the applicant to find out information and there is a point where public interruption, at that point, destroys the thought process; particularly if it's not on the same subject that you are deliberating on. He clarified that he is totally open and wants to listen to the public but he thinks it's basically up to the Chair to control when, how long, how much, staying on the right subject.

Mr. Duncan said that he is not suggesting that the public have the opportunity to interrupt with questions; that following the presentation by the applicant of this evening's subject matter and following our discussion with the applicant, we provide a limited amount of time that the public has to respond to the discussion of the evening and before the ultimate decision is being made. He added that some presentations are one night and it's going to be done and over, give the public an opportunity to say a few words and, then at the next meeting, there's going to be a public hearing, which is noticed; that some applications are here for months and, from one night to the next, he believes the public should have a limited amount of time, following our discussions with the applicant, about what we've talked about that evening so we get some feeling for which way the public is leaning on the application; that it's as much for our benefit as it is for the applicant. He said that we are a group of volunteers with somewhat of a diverse background and expertise and who's to say that Jay Q out there isn't a hydrologist that has a point of view that all of us may have overlooked; that it's best to have that input early on so the applicant can respond to it if there is reason to do so.

The Board members agreed.

Mr. Beckert asked Ms. Horner if she had enough to go on.

Ms. Horner agreed that she did.

Mr. Duncan said that he thought that first sentence needs a little re-work.

After further discussion, the PB agreed to include language that supports 'germane to the topic discussed' and 'if not germane, give in writing.', and to have public input after the applicant presents and the PB discusses with the applicant but before the final pull-back to the PB for their deliberations.

Mr. Lentz said yes to the Growth Permit fee.

After some discussion, Ms. Pelletier clarified that, usually, the moratorium is for if you're not sure of what you're going to do or you are going to allow it but you want time to develop regulations around it, not if your intention is to prohibit it; it seems like why wouldn't we just present the article prohibiting it, if that's the direction you are going, instead of this two-step process of a moratorium and, then, prohibiting it later, anyway.

Mr. Whalen asked if the SB knew that we were in the process of holding public hearings and drafting an ordinance for the November ballot, would they, then, decide to remove this from the ballot.

Ms. Pelletier said that she asked that question and was told there was no guarantee that our ordinance would pass but the same could be said for the moratorium.

Mr. Lentz said that if people want to use marijuana today, it's legal; that they can use it, they can grow it in their own back yards and, until there is some kind of a study that he can see what the payback is for retail shops, smoke shops, processing, he's totally against it because, in his mind, he can't justify the administrative costs in trying to administer and maintain it; that he doesn't see the payback and he does see a lot of issues.

Ms. Bennett supported just going with a moratorium; that she believes we can do successive moratoriums and it would give us more time for some more clarification. She added that she thinks most towns are chaffing at the structure of this law; that she thinks the burden is borne by the locality and the benefits are seen by the State; that it deserves more conversation.

Ms. Pelletier said that the towns can establish their own licensing fees.

Mr. Duncan said that, if he were asked today to vote 'yea' or 'nay', he would say to not allow but, like Ms. Bennett, he thinks there is reason to have further discussion involving public input. He added that he has a hard time believing there is a social benefit to having either one of these in Town but he thinks we need to have that discussion before we make a final decision.

Ms. Horner said that she thought we should schedule two public hearings; that there may not be much attendance at the first but, maybe, that would get the ball rolling; that she thought more discussion was good.

Mr. Beckert said that the question tonight is does the PB want to move forward with any type of ordinance-writing, at this point, or does the PB just want to let the SB run with the moratorium issue in November.

Ms. Horner asked if ARC wasn't in here more recently than September 20, 2016 and that was when we were talking about the pond.

Ms. Pelletier said that she would have to go back and look.

Ms. Horner said that that was almost a year ago that Ms. Bennett is referencing but feels the pond was a more recent conversation. She asked, if they said they would build a pond, how are we supposed to enforce when they would do that, as they have so many months to build things.

Ms. Pelletier agreed, saying that it is very clear that it is the CEO's job to enforce that; however, in this particular situation, ARC never called for a final inspection; that they don't even have a Certificate of Occupancy for that building, and that's on them; that she can't be chasing people around like that and is completely their responsibility to call us for that final inspection.

Ms. Bennett asked if we actually published a public notice in the paper.

Ms. Pelletier said that she would have to go back and look, adding that she would.

Mr. Beckert said that he would be curious to see the date they were in here last, as well.

There was discussion regarding who was responsible for Fire Chief recommendations, the PB or State Fire Marshall office.

Ms. Pelletier said that it was entirely the applicant's responsibility to seek out every permit that he or she needs; that it's nice that the PB can remind them that they need to do something, and sometimes you can link them with conditions, but that's a State agency; that anything over 3,000 square feet goes to the State Fire Marshall for full review. She added that, if the PB wants to include things like this in the conditions, then they should.

Mr. Whalen asked if Ms. Pelletier had heard from them (ARC) since the fire in terms of their plans to rebuild.

Ms. Pelletier said no.

Mr. Whalen asked, regarding the timeliness of the 'Decisions', if there was a suggestion from the administrative side of it as to how to accelerate that process and to be more efficient in terms of closing the gap; is there anything the Town should be supplementing.

Ms. Pelletier said that she's been drowning in work for years and we've, just today, started a new admin person; that, hopefully, that will...but three people share her and she's part-time; that she's not sure it's even the admin person's job duty to take on something like this and the Town is not willing to fund another position. She added that

a decision letter; that that is just a 'cover your but' here's how we checked each requirement.

Mr. Whalen asked if there was a requirement to issue a decision letter.

Ms. Pelletier said that she did not believe there was.

Mr. Whalen said that the dumb question is why do we do it.

Ms. Bennett said that we would be setting ourselves up for a lawsuit; that if one of our decisions is challenged and it goes to Superior Court, the Superior Court immediately remands it back to us for reconsideration – we haven't done our job, we haven't finished off the file.

Ms. Pelletier said that it is not mandated by statute but, in a way, it is mandated by case law.

Mr. Whalen said that the minutes don't suffice.

Ms. Pelletier agreed that they don't suffice, but it's not stated in a statute quite that clearly.

Mr. Duncan said that, as a standard condition of approval, does it make sense to add a new condition that basically ties comments that result in actions being required by police, fire, health, whatever our expert list is, to be incorporated as a condition without us having to sit there and say, for example, that the Fire Department asked for a pond so we're going to make it a condition of approval for this particular application; that those inputs are part of the file for the application and, if we had a blanket, standard condition that sort of references any of those actions. He asked if we can do something like that.

Ms. Pelletier said that she wanted to say yes; however, suppose you had a new Police Chief and he didn't know that what he's asking you had nothing to do with something the PB could impose; that they can't ask you to impose something that has nothing to do with the ordinances; that conditions are to further promote the ordinances, so, it has to have some relationship to our ordinances; that she isn't saying that someone wouldn't request something that isn't in line with them, but what if they did...then you've just made a blanket statement. She added that, with like everything, you have to look at each case on an individual basis and the comments; that that is why it takes so long. She said that every case is different; that she guessed you could do whatever you wanted to do in that department; that that is just her opinion; that she doesn't know that she has a legal basis to form that opinion on she can seek one out, ask an attorney, if the PB would like.

Mr. Whalen said that, on occasion, we have asked various department heads, based upon their feedback and comments on an application, to appear because we've got additional questions and we've asked Ms. Pelletier to reach out to them to ask them to attend the public hearing. He added that he recalled that, on a couple of occasions, as a result of the

Ms. Bennett said that some boards will put off the actual date of the decision until they've prepared that notice.

Ms. Pelletier said that you have time limits in the ordinance that would prevent you from doing that most of the time; that if you deem an application complete, you have 30 days.

Ms. Bennett said that, with a lot of the decisions that are in arrears, we weren't close to the 30-day time; that we still had room to breathe and do it right; that she is urging the PB to consider doing that in the future, suggesting they might adopt some best practices from the State.

Ms. Bennett read suggestions from the MMA manual and the PB discussed the pros and cons of those suggestions.

Mr. Lentz said that we have the statutes, we have the process, which is go get the job done; so, let's fix the problem, let's get Ms. Pelletier some help and past practice says it is her job to do this. He added that she is an employee and has a boss; that she works for the Town Manager, so, if she's not getting the time to do it, that's his problem and he needs to fix it.

There was further discussion regarding the resolution of the drafting of the decision letters and, **by consensus**, the PB agreed that the Chair will consult with the Town Manager to propose a resolution.

Mr. Beckert asked Ms. Bennett to make copies of that MMA information for everybody.


Ms. Bennett agreed that she would.

ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for September 19, 2017 at 7PM.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 9:25 PM.


Steve Beckert, Chairman
Date approved: 11/18/2018

Respectfully submitted,

Ellen Lemire, Recording Secretary